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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5361 OF 2006

The Malad Sahakari Bank Ltd. .. Petitioners
Vs.
Smt.Vidya Prakash Bhatte. .. Respondent.

Mr.Sajan Oommem i/b. M/s. Leega Apex for petitioner.
Mr.R.M. Joshi for respondent.

CORAM : J.H. BHATIA, J.

DATE : 12TH OCTOBER, 2007.

P.C. :-

. Rule.

2. Rule made returnable forthwith. With consent of learned counsel for the parties the matter is taken up for final hearing. The petitioner has filed ABN/CC/IV/197/1996.

3. To state in brief the petitioner is the Co-Operative Bank. According to the petitioner, deceased Prakash Bhatte had taken loan for some business and he had also mortgaged certain properties in favour of the petitioner bank. Respondent nos. 2

and 3, who are original opponent nos. 2 and 3, were the guarantors. During the pendency of the dispute, the original opponent no. 1 Prakash, who was principal borrower, died and his widow was brought on record as his legal heir and the matter proceeded. After hearing the parties 4th Co-Opperative Court, Mumbai passed an award only against the respondent nos. 2 and 3, who are the guarantors but refused to pass any such award against the legal representatives of deceased borrower on the ground that the petitioner bank had not produced any evidence to show that property of the deceased borrower had reached the hands of his legal heirs. Being aggrieved by the rejection of the claim against the legal heirs of the principal borrower, the petitioner bank preferred the appeal no. 17 of 2005. At the time of hearing of the appeal, the petitioner bank tried to produce some documents to show that widow of the deceased borrower has inherited some of the property but the learned Appellate Court refused to allow that evidence and dismissed the appeal. Therefore, the petitioner bank has preferred the present writ petition, challenging the order.

3. The question of law is whether decree can be passed against the legal heirs of the opponent no. 1, who was undisputedly the borrower. The courts below

dismissed the dispute against the widow of the deceased borrower only on the ground that she has not inherited any property of the deceased borrower. In fact this question could be considered only at the time of execution of the award and not at the time of passing an Award. Widow of the opponent no. 1, being the legal heir of the borrower, was necessary party and the award could be passed against the principal borrower through his legal heir. Of course such an Award or decree could be executed only against the property of the deceased borrower which would come into the hands of his legal heirs and decree could not be executed against the personal property of the legal heirs. Both the courts below committed an error in dismissing the claim against the legal heir of the deceased borrower. An Award could be passed against the principal borrower and the Guarantors jointly and severally. As the borrower has expired and have been substituted by his legal heir, he could be shown as opponent or judgement debtor through legal heir. As there appears no dispute that the deceased opponent no. 1 Prakash Bhatte had obtained loan, which was guaranted by the opponent nos. 2 and 3, an award has to be passed against all the opponents with clarification that the award against the legal heir of the deceased opponent no. 1 could be executed only to the extent of the property of the

deceased which would come in the hand of his legal heir.

4. Therefore, the petition is allowed. The impugned order passed in Case No. ABN/CC/IV/197 of 1996 by the 4th Co.-Operative Court, Bandra, Mumbai, stands modified as follows :

:: O R D E R ::

1. The opponent nos. 1 to 3 shall be jointly and severely liable to pay amount of Rs.3,52,669.50 with interest thereon @ Rs.7.5 % p.a. from 1st June, 1996 till realisation of the amount. However, as far as legal heir of the original opponent no. 1 is concerned, the Award shall be executed only against the property of the deceased borrower which may come into the hands of his widow and not against any other property of the widow.

2. Rule made absolute accordingly.

(J.H.BHATIA, J)